

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:)
)
LOUISE BURTON-ALSTON,)
)
Debtor.)
)

)
FELICIA SPRINCENATU,)
) 1:06CV765
Appellant, pro se,)
)
v.)
)
RICHARD M. HUTSON, II, Trustee,)
)
Appellee.)

ORDER

This matter is before the Court on a Motion to Dismiss [Document #8] by Appellee Richard M. Hutson, II, the Trustee in Bankruptcy Case Number 97-16333, which was closed on September 16, 2002. On August 16, 2005, almost three years after the final discharge was entered, Appellant Felicia Sprincenatu (“Appellant Sprincenatu”), who was a creditor in the bankruptcy case, attempted to reopen the bankruptcy. Appellant Sprincenatu, who is *pro se*, now attempts to appeal an order of the Bankruptcy Court denying her motion to reopen the bankruptcy case, an order of the Bankruptcy Court denying her motion to reconsider that prior order, and an order of the Bankruptcy Court denying her motion for leave to appeal in forma pauperis and for appointment of counsel. On September 14, 2007, the Magistrate Judge entered a Recommended

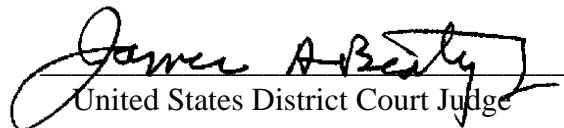
Decision [Document #16] recommending that the Motion to Dismiss be granted, based on Appellant Sprincenatu's failure to timely file an Appeal Brief as required by Bankruptcy Rule 8009(a)(1). On October 3, 2007, Appellant Sprincenatu filed Objections to that Recommended Decision. The matter was referred to this Court on February 28, 2008.

The Court has undertaken a *de novo* review of the issues raised in the Motion to Dismiss and the Objections to the Recommended Decision. Based on this *de novo* review, the Court adopts the Recommended Decision and concludes that Appellant Sprincenatu was negligent in failing to timely file an Appeal Brief, that Appellant Sprincenatu has not adequately explained her failure despite being given an opportunity to do so, and that the failure and delay by Appellant Sprincenatu is prejudicial to the Trustee and the Debtor. Moreover, based on Appellant Sprincenatu's actions in this appeal and in light of her prior conduct in the bankruptcy case and the prior appeals in that case, the Court concludes that her failure to timely comply with the Bankruptcy Rules in the present appeal was in bad faith. The Court has considered other alternatives but concludes that no less severe sanctions would adequately address the situation. Therefore, the Court concludes that dismissal of the appeal is appropriate in the circumstances, and the Court adopts the Magistrate Judge's Recommended Decision [Document #16].¹

¹ The Court notes that to the extent that Appellant Sprincenatu contends that the Recommended Decision failed to separately consider her appeal of the Bankruptcy Court's order denying her request for leave to appeal in forma pauperis, Appellant Sprincenatu has failed to timely file an Appeal Brief with respect to any attempted appeal in this case, including any appeal of the order denying her request to proceed in forma pauperis. Therefore, the findings and

IT IS THEREFORE ORDERED that Appellee's Motion to Dismiss [Document #8] is GRANTED and this Bankruptcy Appeal is DISMISSED.

This, the 19th day of March, 2008.



James A. Bechtel
United States District Court Judge

reasoning of the Recommended Decision would apply with respect to her attempted appeal as to all of the underlying Bankruptcy Court Orders. Moreover, Appellant Sprincenatu has not separately moved in this Court for permission to proceed in forma pauperis or for appointment of counsel, and in any event would not be entitled to proceed in forma pauperis or for appointment of counsel given the frivolousness of her appeal. See 28 U.S.C. § 1915.